

Factsheet No.4

Negotiating with Creditors: What happens when I can't pay?



This factsheet looks at ways to negotiate with your creditor if you can't afford your repayments or to pay off your debt in one lump sum.

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If you have a debt that you cannot afford to pay, you can try to negotiate with the creditor. You cannot force a creditor to negotiate, but many will. There are a number of different methods of payment as an alternative to paying the full amount in a 'lump sum' (in one complete payment).

It is a good idea to put your negotiations in writing and make sure that any agreements between you and the creditor are also in writing. You should **always keep a copy** of what has been agreed.

You can get help to understand your options and to negotiate with the creditor. Talk to a financial counsellor or a community legal centre or legal aid lawyer.

If you believe that you do not owe the money, or that the contract has some unfair terms, you should get legal advice as soon as possible.

Payment by instalments

If you can pay smaller amounts of the debt over time, the creditor might agree for you to pay off your debt by instalments. Make sure that you can afford the instalment amount and that you continue

to make the instalment payments when they are due.

If you do not pay the instalments you agreed to pay, the creditor may take legal action to recover the whole debt.

Postponement of payments

If your inability to pay is only temporary, you could ask for a "moratorium" (a postponement of debt payment) for a set period of time.

If the creditor agrees to a moratorium, you will still have to pay the debt when the moratorium ends. If you ask for a moratorium, it also a good idea to ask that no interest and fees be charged for that period. Otherwise, the debt will increase during the moratorium. Some creditors may agree to this kind of arrangement, but they do not have to do so.

A reduced lump sum

If you are unlikely to ever have enough money to pay the full amount you owe, you could offer to pay a smaller lump sum to finalise the debt.

Some creditors prefer to accept this smaller amount rather than wait a long time for their money or risk not getting anything at all.

Waiver of the debt

If you are suffering severe hardship, and will never be able to pay off the debt due to your special circumstances, you might be able to negotiate to have the debt waived (written off).

You will need to show that there are good reasons why you will never be able to pay. For example, that you have no money or assets, and you cannot

work because of your age or disability.

It will help if you provide the creditor with documents such as a letter confirming you get Centrelink payments, a letter from a social worker or financial counsellor, evidence of other debts, and a letter from your doctor.

Hardship variations to loans under the National Credit Code

If you are temporarily having trouble making loan repayments, due to circumstances like losing your job or being sick, you can apply for a variation to your loan on the grounds of hardship.

You can only get a hardship variation for a loan that is for personal or domestic use, (not for business or investment purposes), such as loans for a car, household goods or a home you live in.

The National Credit Code sets out what variations can be made to a loan. These include:

- extending the period of the contract and reducing the amount of each payment
- Postponing (stopping) payments for a specific period of time
- Extending the period of the contract and stopping payments for a specific period of time.

Usually the changes will only be made for a short period until your situation improves.

You need to request a hardship variation in writing. There are helpful sample letters available from the [Consumer Credit Legal Centre](#) website.

If the lender refuses your request for a variation to the loan based on hardship, the lender must provide you with the name of the relevant external dispute resolution (EDR) scheme, and you can lodge a dispute with the lender under that EDR scheme.

If a resolution cannot be reached using the EDR scheme, you may apply to the court to change the terms of the contract.

Consolidation loans

Consolidating debts usually involves getting a new loan to pay off a number of existing debts and /or loans.

Consolidating debts may not improve your situation. Sometimes the interest rate on the consolidation loan is higher than the interest on the original debts/loans. The repayments on the new loan may also be higher than the original payments. You may also have to pay a loan establishment fee.

Make sure you seek financial counseling before you decide to get a consolidation loan.

Pro rata payments

When you have many debts, paying one debt can mean others do not get paid. If you can negotiate a pro rata payment system, each debt has a regular instalment payment made that it is in proportion to the size of the debt.

All your creditors need to agree before a pro rata payment system can be set up. A financial counsellor can help you negotiate with creditors about this.

You can find a Financial Counsellor from the [Financial Counsellors' Association of NSW](#) website or call 1300 914 408.

Produced by Redfern Legal Centre.

This factsheet is a guide to the law in New South Wales, Australia. It is not a substitute for legal advice. If you have a legal problem seek legal advice from your local community legal centre or legal aid office.

January 2012